



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT-042-FOR; Docket ID: OSM-2023-0007;
S1D1S SS08011000 SX064A000 231S180110;
S2D2S SS08011000 SX064A000 23XS501520]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). During the 2023 legislative session, the Montana legislature passed House Bill 576 (HB 576), amending the Montana Strip and Underground Mine Reclamation Act as well as the Montana Code Annotated (MCA). Accordingly, Montana submitted this proposed amendment to OSMRE on its own initiative. Montana's proposal amends the definition of "Material Damage," by changing the requirements for what is considered "Material Damage" to the hydrologic balance.

Montana's proposal also amends permit requirements for mine operations related to hydrologic information. The amendment removes the requirement that a permit applicant must submit hydrologic information to the Montana Department of Environmental Quality (DEQ) before DEQ approves the permit application. Lastly, HB 576 adds four contingencies to the proposed amendments of the MCA: a severability clause, a contingent voidness clause, an effective date clause, and a retroactive applicability clause. This document gives the times and locations that the Montana program and this proposed amendment to the program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., M.D.T., [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we may hold a public hearing or meeting on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., M.D.T. on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. MT-042-FOR, by any of the following methods:

- *Mail/Hand Delivery:* OSMRE, Attn: Jeffrey Fleischman, P.O. Box 11018, 100 East B Street, Room 4100, Casper, Wyoming 82602
- *Fax:* (307) 261-6552
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM-2023-0007. If you would like to submit comments, go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

We cannot ensure that comments received after the close of the comment period (see "DATES") or sent to an address other than the ones listed above will be included in the docket for this rulemaking and considered.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Montana program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Casper Field Office or the full text of the program amendment is available for you to read at www.regulations.gov.

Attn: Jeffrey Fleischman, Field Office Director
Office of Surface Mining Reclamation and Enforcement
100 East B Street, Casper, Wyoming 82602
Telephone: (307) 261-6550
Email: jfleischman@osmre.gov

In addition, you may review a copy of the amendment during regular business hours at the following location:

Attn: Dan Walsh, Mining Bureau Chief

Coal and Opencut Mining Bureau

Department of Environmental Quality,

P.O. Box 200901

Helena, MT 59601-0901

Telephone: (406) 444-6791

Email: dwalsh@mt.gov

FOR FURTHER INFORMATION CONTACT:

Attn: Jeffrey Fleischman, Field Office Director

Office of Surface Mining Reclamation and Enforcement

100 East B Street, Casper, Wyoming 82602

Telephone: (307) 261-6550

Email: jfleischman@osmre.gov

SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Montana Program

Subject to OSMRE's oversight Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-

Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7).

On the basis of these criteria, the Secretary of the Interior approved the Montana program on October 24, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the October 24, 1980, **Federal Register** (45 FR 70445). You can also find later actions concerning the Montana program and program amendments at 30 CFR 926.25.

II. Description of the Proposed Amendment

By letter dated June 1, 2023 (Administrative Record No. MT-042-01), Montana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). We found Montana's proposed amendment to be administratively complete on June 5, 2023.

Montana submitted this proposed amendment to us, of its own volition, following the passage of Montana House Bill 576 (HB 756) during the 2023 legislative session. HB 576 amends the Montana Strip and Underground Mine Reclamation Act as well as §82-4-203 and §82-4-222 of MCA. HB 576 also adds four contingencies that apply to the proposed amendments.

First, Montana proposes several changes to §82-4-203(32), which defines and describes "Material Damage." Currently, this section dictates how "Material Damage" applies to the protection of the hydrologic balance. Montana now proposes to create three sub sections under §82-4-203(32) and will explain how "Material Damage" applies to each.

Proposed subsection §82-4-203(32)(a) would create two requirements for an

action or inaction to be considered “Material Damage” to the hydrologic balance. The first requirement is that the coal mining operation cause significant, lasting or permanent, adverse changes to water quality or quantity that affect the beneficial uses of, and rights to, the water outside the permit area. This requirement incorporates §82-4-203(32)’s current language, but with modifications. Montana proposes to replace the phrase “degradation or reduction” with “significant long term or permanent adverse change.” Montana also removes violations of water quality standards, regardless of whether an existing water use is affected, from the definition of “Material Damage.” The second requirement for an action or inaction to be considered “Material Damage” to the hydrologic balance is that a coal mining or reclamation operation cause a lasting or permanent exceedance of a water quality standard outside a permit area. There is an exception to this second requirement for water bodies whose water quality standard is stricter than the baseline conditions the DEQ determines when assessing an operation’s cumulative hydrologic impacts. For those water bodies, this requirement is instead met if the coal mining and reclamation operation causes an adverse effect to land use, beneficial uses of water, or water rights.

Proposed subsection §82-4-203(32)(b) would apply when determining if an alluvial valley floor is “Materially Damaged.” Montana proposes to modify the definition of “Material Damage” by adding language that accounts for the degradation or a reduction of water quality or quantity supplied to an alluvial valley floor by a coal mining and reclamation operation, but only if those actions or inactions significantly decrease the alluvial valley floor’s ability to support agricultural activities.

Proposed subsection §82-4-203(32)(c) would apply when determining if subsidence caused by underground coal mines is “Material Damage.” Subsidence caused by underground coal mines would constitute “Material Damage,” when there are significant impairments to surface lands, features, and structures; physical changes that

have significant adverse effects on a lands current and reasonably foreseeable uses, production, or income; or when there is any significant change to a structure's pre-subsidence condition, appearance, or utility.

Next, Montana proposes to amend its coal mine operation permit requirements related to hydrologic information by removing two sentences from §82-4-222(1)(m). The first sentence states that the DEQ is not required to determine the probable hydrologic consequences of a coal mining and reclamation operation until the coal mining permit applicant submits the necessary hydrologic information to DEQ. The second sentence prohibits the DEQ from approving a coal mining permit application until the coal mining operation provides necessary hydrologic information to the DEQ.

Lastly, HB 576 adds four contingencies to the proposed amendments of §82-4-203(32) and §82-4-222(1)(m) that are not codified into the MCA but apply to the amended sections. Section 4 of HB 576 states that if any or all parts of HB 576 is found invalid, any parts found valid will remain in effect. Section 5 of HB 576 states that if the Secretary of the Interior disapproves any provision of the HB 576, then that portion is void. Section 6 of HB 576 states that HB 576 is effective upon passage and approval. Lastly, Section 7 of HB 576 states that HB 576 applies retroactively to actions for judicial review or other actions challenging permits, amendments, license, arbitration, action, certificate, or inspection that are pending on or after the effective date.

The full text of the program and/or plan amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., MDT. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time

of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program and/or AML plan amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866,

retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment.

We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR part 926

State regulatory program approval, State-federal cooperative agreement,
Required program amendments.

David A. Berry,

Regional Director, Unified Regions 5, 7-11.

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